



COMMUNITY DEVELOPMENT DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

MAY 10, 2011

PRESENT: Mueller, Moniz, Tanda, Koepp-Baker, Benich

ABSENT: None

LATE: None

STAFF: Deputy City Attorney (DCA) Jefferson Billingsley, Police Chief (PC) Swing, Planning Manager (PM) Rowe

Chair Mueller called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Planning Manager Rowe certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Mueller opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

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ORDERS OF THE DAY

No changes.

PUBLIC HEARINGS:

1) ZONING AMENDMENT, ZA-11-07: MEDICAL MARIJUANA ORDINANCE:

A proposed addition of Chapter 9.16 to Title 9 (Public Peace, Morals and Welfare) and Section 18.02.075 to Title 18 (Zoning) of the Morgan Hill Municipal Code prohibiting Medical Marijuana Dispensaries in Morgan Hill.

Recommendation: Adopt Resolution recommending Council approval of a Medical Marijuana Ordinance banning Medical Marijuana Dispensaries in Morgan Hill.

Billingsley presented his report.

Benich: It's clear that the medical marijuana dispensaries are not currently permitted in Morgan Hill anyway, so why are we going through all of this?

Billingsley: Something that is unpermitted still leaves open the avenue of someone asking for a zoning amendment to make it a permitted use. What we have is a definitive land use regulation that would make clear that we will not allow medical marijuana facilities in the City.

Benich: Why wouldn't we just say no to a zoning amendment change if someone came in and applied for one? It seems like a lot of staff time for something that's not really needed.

Billingsley: Someone could ask for that and they'd have to come before you. This would be a definitive decision that makes clear that such requests will not be granted.

Swing presented his report.

Benich: It seems one of the key components here is Prop 215. If there is an outright ban in the City of Morgan Hill and there are people growing it for personal use, how would that change things?

Swing: It wouldn't change things at all in the methods of prosecution. That would be the same without or without a ban. The ban only applies to the sale of marijuana at a dispensary.

Koepp-Baker: Would there be any reason to expect that a person who has had marijuana prescribed would not be able to get that prescription filled?

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Swing: If you're talking about Marinol, the synthetic version, which could be filled at a licensed pharmacy. As far as dispensing actual marijuana, I don't believe that any pharmacies dispense real marijuana.

Koepp-Baker: Bottom line is that if a person has a prescription, they'd be able to get their prescription filled, right?

Swing: That is correct.

Moniz: Do you know the number of residents in Morgan Hill with medical marijuana cards?

Swing: No.

Moniz: Do they have to register with you?

Swing: No.

Moniz: Is it true that the county has a regulatory process for the cultivation and selling of marijuana.

Swing: It is my understanding that they do have a process that regulates the cultivation and selling of marijuana. It is a very restrictive process that limits it to a very finite section of town. I didn't have a chance to verify that this evening.

Mueller opened the floor to public comment.

Art Barron with Morgan Hill Healthy Families Advocacy Coalition appeared: Our organization has joined with several others to speak out against drug and substance use. And to answer Commissioner Benich's question about why is a ban being imposed before anyone has applied for a dispensary, Gilroy learned the hard way. Somebody opened a dispensary. There was no regulation or ordinance there. They didn't have a business license and it has cost the City of Gilroy thousands of dollars to fight it. Now they have a ban in place. If they would have had a ban prior to that they would have saved themselves a lot of headaches and money. Tonight we have in attendance Live Oak there youth advocates. They wanted to come and show support for the ban. They will tell you that kids used to look forward to getting their drivers licenses at the age of 16. Now they look forward to getting a medical marijuana card at age 18. We support the ban of the dispensaries.

Bob Cooke appeared on in support of the ban: I am here on behalf of the 65,000 people that are members of the National Narcotics Association. I am also the past president of the California Narcotics Association, which represents 8000 members of every law enforcement agency that operates in our state. These men and women are charged with preventing crime and ensuring public safety while they enforce controlled substances laws. The drug legalizers such as the Medical Marijuana Policy and Americans for Safe Access simply want to normalize and legitimize marijuana dispensaries as the first step in legalizing marijuana, itself. Marijuana is already a registered carcinogen in California. The argument that legalization will result in a financial windfall is B.S. The Rant Corporation debunked that fiscal

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claim in October 2009 at an informational hearing, and the mere consideration of attempting to trade human suffering for tax dollars is cynical and throws away countless lives. California spends 19.9 billion dollars on substance abuse and addiction, or \$545 per capita with a population of 36.5 million people per year. That's just for alcohol and tobacco. The state collected 1.4 billion dollars of tax revenue—roughly \$38 per capita on the sale of alcohol and tobacco products. The costs far exceed the revenue. These dispensaries say they'll bring tax dollars. They're lying. They don't have to pay taxes. They're non-profits. That doesn't mean they can't pay their employees exactly what they want. If you've seen the dispensaries that have been taken down in this county, those owners were making hundreds of thousands of dollars per year in hiding money in their children's bank accounts. They're money launderers. San Diego learned that 92 percent of all their medical marijuana users were not suffering from any of the illnesses originally voted on by Prop 215's Compassionate Use Act. Smoked marijuana is not a medicine. The FDA has said that. Legitimate doctors agree that there are better medicines than marijuana. Most of the people that are issuing medical marijuana cards aren't even practicing physicians. There are more youth in treatment for marijuana than any other substance, including alcohol. We owe it to our kids and community to not let this happen. Ban them.

Brian Ferrante, a resident of Morgan Hill, appeared. I would like to address what kind of neighbors these dispensaries make. I work in San Jose and have some experience with this sort of thing. They want to come across like they're providing medicine for their patients. They're really the only ones who call this medicine. Most reputable organizations do not call marijuana medicine. It is a Schedule 1 drug. It has no medicinal purpose. Calling it medicine is an attempt to legitimize the business. This is really about selling marijuana and getting people high. I have attended a number of Council meetings in San Jose regarding the ordinance that they're trying to introduce. At one of these meetings people were paid by the dispensary with weed to attend the meeting. A lot of crime is associated with these dispensaries. One dispensary burned to the ground and the owner indicated that he'd been burglarized three times but had never reported it. These dispensaries are often associated with organized crime and they make terrible neighbors.

Mrs. Fernandez, mother and pediatrician, appeared: Looking at statistics from Holland after marijuana was legalized, they show a dramatically increased use among teenagers. The side effects for youth are terrible. Positive effects that cannot be gained from the use of other medications are not known. More study is needed for that. However, marijuana is known to be a gateway drug that changes the chemistry of the brain in the young and makes a person more likely to become addicted to other drugs, which has grave effects on their futures.

Mike Robinson, resident of Morgan Hill, appeared: The Compassionate Use Act is about the sick. Medical marijuana is not about the sick. Studies show that only 2 percent of the users suffer from aids, glaucoma or cancer. 90 percent of users' ailments are muscle spasms, insomnia, anxiety and minor pains. Marijuana is a carcinogen. It is addictive and it is cancer causing. It has more carcinogens than tobacco. Indoor growers do so to control the amount of THC in the plants. These places are dangerous. Dispensaries are not in business to help the sick; they are in business to make money. A UN Annual Drug Control report from 2006 shows

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THC levels have been genetically manipulated and that cannabis is not the harmless herb that it is portrayed to be, but a dangerous psychoactive drug. Allowing marijuana dispensaries in our community will be doing a great disservice to teens by giving the idea that marijuana is legal.

Doug Muirhead, Morgan Hill resident, appeared: I am here to ask for regulation rather than prohibition. On page 5 of the cover memo in reference to Prop 215, it does not show the vote of the people. Some voters did vote yes for the proposition. I don't accept my yes vote as a no vote. When there have been problems with behavior related to alcohol, the sale of all alcohol in the city was not banned. There are ways to deal with problems resulting from crime and drugs. It's not a black and white situation. We should not be prohibiting the use of medical marijuana.

Mueller closed the public hearing.

Mueller: Jefferson, by way of clarification, this ordinance is about prohibiting dispensaries, it's not about prohibiting the use of medical marijuana by an individual who has an identification card that allows them to grow it for themselves, correct?

Jefferson: This only prohibits the dispensaries.

Tanda: I had not made up my mind, prior to tonight's meeting. Most of the speakers tonight were addressing whether the use of marijuana use is right. That's really a discussion for another time. Tonight's discussion is about banning dispensaries in Morgan Hill. I do believe that this will require more resources from the Police Department to regulate and monitor if we allow dispensaries. In our present state, we do not have the resources for that.

Benich: In hearing testimony, if we try to regulate medical marijuana dispensaries it is going to take a lot of time and money and probably more personnel with the Police Department. Given the state of our finances, I would be leaning toward a ban.

Moniz: It was hard to pick through the facts that are relevant to tonight's proceedings. Banning the dispensaries would not prohibit people with a medical use card to still be able to use marijuana.

Koepp-Baker: We are being asked to vote on a municipal code that would prohibit medical marijuana facilities in our city. I have not heard anything tonight that would make me think that having a medical marijuana distribution facility in Morgan Hill would be beneficial to any group of people. If you can get a prescription from your doctor and go get a substitute from a pharmacy, why would we have facilities that are growing and selling marijuana? It would take a great deal of resources to monitor that. We didn't hear that the police department knows who carries identification cards. We don't need this in Morgan Hill.

Mueller: I think it's pretty clear that the intent of the Compassionate Use Initiative is being way over abused. From the data presented, it sounds like only a very small percentage of those that the state was intending to help are those who are actually

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using the facilities.

COMMISSIONERS TANDA AND KOEPP-BAKER MOTIONED TO RECOMMEND APPROVAL OF A RESOLUTION PROHIBITING MEDICAL MARIJUANA DISPENSARIES IN THE MORGAN HILL ZONING CODE

THE MOTION PASSED (5-0-0-0) WITH THE FOLLOWING VOTE:

AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

2) ZONING
AMENDMENT,
ZA-11-08:
REVISIONS TO
THE HOME
OCCUPATION
ORDINANCE:

A proposed amendment to Section 18.48.055 (Home Occupations) of Chapter 18.48. (Performance Standards) of the Morgan Hill Municipal Code to comply with state regulations regarding massage practitioners and establishments and further changes to the home occupation ordinance to ensure that home occupations do not change the character of residential neighborhoods.

Jefferson presented his report.

Koepp-Baker: Can you clarify on the business vehicle restriction, is that talking about on the street parking as opposed to in the driveway?

Billingsley: It would be limited to one in the driveway or in the neighborhood.

Koepp-Baker: What if two people in the household operate home businesses and they both drive a car with an insignia?

Billingsley: This isn't about an insignia, this is about a service vehicle that is used for the business, not a regular vehicle with an advertisement.

Koepp-Baker: Should we describe what a service vehicle is in this ordinance?

Rowe: I think that would be helpful.

Billingsley: The genesis for this is that it goes against the residential character of a neighborhood. If somebody is parking two or three service vehicles with equipment on them that is the kind of thing that is drawing complaints.

Moniz: Can you define a commercial-size vehicle?

Billingsley: That is usually done by weight. Many vehicles are commercial. I think we would need something more specific than just a definition of a commercial vehicle.

Koepp-Baker : But if two people in a family drive vehicles for their companies, would they be in violation? Maybe we need clarification of what constitutes a service vehicle, because I think maybe we're being a little too restrictive.

Moniz: You said the origin of this was citizen complaints?

Rowe: What prompted this is that we received complaints about someone whose

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employees came to the home daily to drop off their personal vehicles and then drive the service vehicles from the residence to the jobsite.

Mueller: I think maybe we could word it to say something like vehicles are not allowed that are being used by non-household members. That would help clarify it.

Billingsley: That was the genesis for Section 9 as well, so that if a resident had an employee coming to the house several times a day, then that counts toward the number of vehicle trips.

Koepp-Baker: Yes, we should prohibit people garaging a fleet.

Mueller: Maybe Jefferson will want to bring this back another time after having a chance to re-word some things.

Jefferson: I could come back with some clauses to be looked at in.

Tanda: Under Section 9 when it talks about the ten vehicles trips per day, could you clarify that? To me that would be 5 roundtrips.

Rowe: One of the intents of the home occupation ordinance is to prevent alteration of the residence. A typical single family residence generates about 10 vehicle trips per day. Currently, the wording just says ten vehicles. So a person could have an unlimited number of trips. So limiting the number of vehicle trips is more in line with the characteristic of a residential neighborhood. We get complaints when a residence gets traffic that is in excess of what is typical for the neighborhood.

Tanda: But ten vehicles would actually be 20 trips—one to the residence and one away from the residence.

Mueller: I think Commissioner Tanda is looking at this as a traffic study.

Rowe: If you want to suggest 20 vehicle trips or some other number, that is fine. But right now the ordinance doesn't limit the number of vehicles. There can be an unlimited amount. That is what we get complaints about.

Benich: We're making this too complicated. Let's leave it as is.

Tanda: So you want it to say 10 vehicle trips? This is just reinforcing what we would use for a traffic study. Is that what we can do? Because that wouldn't allow for any more trips than just those allotted on average for the family. Do you want it to be that restrictive? I have a real concern about that. My other question involves personal service. As I understand it this ordinance is trying to restrict full body massages?

Billingsley: Under the existing ordinance we do not allow massage as a home occupation. This is just bringing us in line with the new guidelines that were passed in 2009.

Tanda: That applies in commercial areas?

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Billingsley: That applies to any zoning area.

Tanda: I've seen additional massage facilities opening up in commercial areas in Morgan Hill. So we're not banning massage in any way? This is to apply additional controls in residential areas?

Billingsley: The state has occupied the field of regulation of massage establishments. We still have control over our home occupations. We haven't changed any of the home occupation rules. We are just making our statute come into compliance. Instead of designating that massage is an occupation that you cannot have, we've made it clear that the ordinance applies equally to all personal services. That's what's required by the statute.

Tanda: So this ordinance is saying that you couldn't do facial massages of someone at your home?

Billingsley: That is correct, but you could do it on an out-call basis, by going to the customer's home.

Tanda: Aren't we making this too complicated?

Mueller: The problem is that the state says you have to have a uniform set of rules. You can't target the one that has the potential to be abused.

Tanda: Would accounting or tax preparation be a personal service?

Billingsley: That's not designated on the list of personal services. There's also the limitation that the service can't be performed while the client is present.

Tanda: Who makes up the list?

Billingsley: It comes from City Council.

Tanda: So they can change it?

Billingsley: Yes.

Moniz: What is on the list of personal services?

Billingsley: Beauty and barber shops; nail salons; tattoo parlors; massage and health spa establishments; shoe repair; self-service laundry and cleaning services; laundry and cleaning pick-up stations; repair, alteration and fitting of clothes.

Koepp-Baker: This is absurd. I have several friends who have business that do make-up and facial massage as a home based business. This is saying that they can't do business in Morgan Hill.

Mueller: There are companies such as Tupperware, Amway, Avon, May Kay, Shaklee, vitamins. These are home based businesses. They don't require a lot of

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inventory but they do require groups of people coming to the home for demonstrations, etc. Some of these companies have been around for a very long time and are big business.

Koepp-Baker: You're saying that these people can't be in business from their homes.

Moniz: Is that true?

Billingsley: I don't think we're saying that. Chairman Mueller's concern, which is a legitimate one, is if we have a limit on the number of clients in a dwelling.

Koepp-Baker: This doesn't fly with me.

Mueller: We're saying they have to have a zoning permit, right?

Rowe: The zoning review is part of the business license process.

Mueller: We should have a clarification on the definition of clients, and limiting the frequency of gatherings.

Koepp-Baker: To start restricting what people can do as a home based business, which provides income for the family, is overstepping our boundaries just to get to massage parlors.

Jefferson: I think we can fix that by clarifying the definition because that is not the intent.

Mueller opened and closed the floor to public hearing.

Tanda: I would like to know what Chief Swing thinks about this.

Swing: What the ordinance is trying to address is the inherent difficulties we have as a police department in enforcing regulations inside someone's home. As it relates to massage business, the state has enacted legislation that oversees the massage business throughout the state of California. It is no longer left up to the local jurisdictions. What we're trying to do is tighten that up and give us the tools we need to enforce it when needed.

Tanda: The list of personal services seems to include an assortment of odds and ends. Do you think we ought to review this to make sure it makes sense.

Swing: The list seems to have come from around the 1980s. It's always good to review, so this could be a good opportunity for that.

Mueller: With these companies like Tupperware and Avon, they are now mostly web based, so they don't maintain large inventories, and the product is delivered directly to the customer, rather than being kept at the house. Can we have a motion to continue?

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COMMISSIONERS KOEPP-BAKER AND MONIZ MOTIONED TO CONTINUE AGENDA ITEM NO. 2 TO JUNE 14, 2011

**THE MOTION PASSED (5-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**OTHER
BUSINESS:**

**3) MULTI-
FAMILY
VACANCY RATE
REPORT:**

Biannual review of apartment vacancy rate as required in accordance to the Morgan Hill Municipal code, Chapter 17.36.

Rowe presented his staff report and stated that in 32 years of working for the City, this is the lowest the apartment vacancy rate has ever been.

Benich: It's probably low because of the current housing situation. I think it's temporary.

Mueller: But our vacancy rate has traditionally been low. We need to check with the development community to see if we can encourage some development of apartments. The only apartment project we have is going to be tied up in EIR for a couple of years.

COMMISSIONERS TANDA AND BENICH MOTIONED TO APPROVE THE MULTI-FAMILY VACANCY REPORT AND FORWARD TO CITY COUNCIL FOR APPROVAL.

**THE MOTION PASSED(5-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**ANNOUNCEMENTS /
COMMISSIONER
IDENTIFIED ISSUES**

At the last City Council meeting the council members conducted interviews for the empty positions for Planning Commissioners. The council voted on their selections to fill all seven seats. Their appointments are scheduled to be ratified at the May 18th meeting.

**CITY COUNCIL
REPORTS**

None.

ADJOURNMENT

Noting that there was no further business for the Planning Commission at this meeting, Chair Mueller adjourned the meeting at 8:40 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

ELIZABETH BASSETT, Development Services Technician